

1 Mark D. Kremer (SB# 100978)  
2 *m.kremer@conklelaw.com*  
3 Rebecca Bellow (SB# 293360)  
4 *r.bellow@conklelaw.com*  
5 CONKLE, KREMER & ENGEL  
6 Professional Law Corporation  
7 3130 Wilshire Boulevard, Suite 500  
8 Santa Monica, California 90403-2351  
9 Phone: (310) 998-9100 • Fax: (310) 998-9109  
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11 Attorneys for Plaintiff Moroccanoil, Inc.

12 UNITED STATES DISTRICT COURT  
13  
14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
15

16 MOROCCANOIL, INC., a California  
17 corporation,

18 Plaintiff,

19 v.

20 GROUPON, INC., a Delaware  
21 corporation; and DOES 1 through 20,  
22 inclusive,

23 Defendants.

CASE No.

COMPLAINT FOR:

1. FEDERAL TRADEMARK  
INFRINGEMENT AND  
COUNTERFEITING  
[15 U.S.C. § 1114]
2. FALSE DESIGNATION OF  
ORIGIN AND UNFAIR  
COMPETITION  
[15 U.S.C. § 1125(a)]
3. STATUTORY UNFAIR  
COMPETITION AND FALSE  
ADVERTISING  
[B&P CODE §§ 17200 &  
17500]
4. COMMON LAW UNFAIR  
COMPETITION AND  
CONSPIRACY TO COMPETE

DEMAND FOR JURY TRIAL

## JURISDICTION AND VENUE

1  
2 1. This action arises under and this Court has original jurisdiction under 28  
3 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1367(a) (supplemental  
4 jurisdiction), 15 U.S.C. § 1121 (registered trademarks), 28 U.S.C. § 1338(a)  
5 (trademarks), and 28 U.S.C. § 1338(b) (unfair competition). This Court also has  
6 diversity jurisdiction under 28 U.S.C. § 1332 because, on information and belief, the  
7 amount in controversy exceeds \$75,000, exclusive of interest and costs, and the matter  
8 is between a California corporation and a Delaware corporation.

9  
10 2. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2)  
11 because a substantial part of the events giving rise to the claims occurred in this judicial  
12 district, and because Defendants are subject to the Court's personal jurisdiction with  
13 respect to this action. 28 U.S.C. § 1391(c)(2).

## SUMMARY OF MOROCCANOIL'S CLAIMS

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15  
16 3. Plaintiff MoroccanOil, Inc., a California corporation located in Los  
17 Angeles, California ("MoroccanOil" or "Plaintiff"), distributes "salon only" hair care  
18 products in Los Angeles County and throughout the United States, including but not  
19 limited to: (a) MoroccanOil Treatment, (b) MoroccanOil Hydrating Styling Cream,  
20 (c) MoroccanOil Restorative Hair Mask, (d) MoroccanOil Intense Hydrating Mask,  
21 (e) MoroccanOil Intense Curl Cream, (f) MoroccanOil Glimmer Shine Spray,  
22 (g) MoroccanOil Moisture Repair Shampoo, (h) MoroccanOil Moisture Repair  
23 Conditioner, and (i) MoroccanOil Luminous Hair Spray (collectively, the "MoroccanOil  
24 Products").

25  
26 4. All of the MoroccanOil Products bear one or more of MoroccanOil's  
27 trademarks, including the marks "MOROCCANOIL®" the "M MoroccanOil Design"  
28 and the "Vertical MoroccanOil M Design" which are federally registered (Nos.

1 3,478,807, 3,684,910, & 3,684,909) in Class 3 on the Principal Register of the United  
2 States Patent and Trademark Office (“MoroccanOil Trademarks”).

3  
4 5. MoroccanOil Treatment is one of the most popular products in the line of  
5 MoroccanOil Products. It is packaged in 3.4 fluid ounce, amber colored, druggist-style  
6 bottles with white screw-on caps. MoroccanOil Treatment bottles have rectangular-  
7 shaped, light blue and white labels containing the MoroccanOil Trademarks and logos  
8 and information describing the contents and the usage of the product. The product  
9 inside the bottles is a viscous mix of argan oil and other ingredients and is amber  
10 colored.

11  
12 6. On information and belief, Defendant Groupon has offered for sale and  
13 advertised counterfeits of MoroccanOil Treatment (and possibly other MoroccanOil  
14 Products). The counterfeit bottles of MoroccanOil Treatment offered, advertised,  
15 distributed, and/or sold by Defendant: (a) are packaged in similar 3.4 fluid ounce (100  
16 mL), amber colored, druggist-style bottles with white screw-on caps, (b) have  
17 rectangular-shaped, light blue and white labels containing imitations of the  
18 MoroccanOil trademarks, logos and information describing the contents and the usage  
19 of the product, that are virtually indistinguishable from authentic MoroccanOil  
20 Treatment and (c) contain counterfeit oil inside the bottles that has a color and  
21 fragrance similar to that of genuine MoroccanOil Treatment.

22  
23 7. MoroccanOil does not sell its products to Groupon, nor is Groupon an  
24 authorized MoroccanOil supplier or distributor.

25  
26 **THE PARTIES**

27 8. Plaintiff MoroccanOil, Inc. is a California corporation with its principal  
28 place of business at 16311 Ventura Blvd., Ste. 1200, Los Angeles, CA 91436.

1           9. Plaintiff is informed and believes that Defendant Groupon, Inc.  
2 (“Groupon”) is a Delaware corporation with its principal place of business located 600  
3 West Chicago Avenue, Chicago, Illinois 60654. Plaintiff is informed and believes that  
4 Groupon advertises, distributes and sells products throughout the United States,  
5 including in Los Angeles County, California. Plaintiff is informed and believes that  
6 Groupon is the registrant and/or owner of the website located at  
7 <https://www.groupon.com/>.

8  
9           10. Moroccanoil believes there are other businesses that offer, advertise,  
10 supply, obtain, distribute and/or sell counterfeit Moroccanoil Products and sues them by  
11 fictitious names DOES 1 through 10.

12  
13           11. Moroccanoil believes there is a manufacturing company, or companies,  
14 that manufacture and sell counterfeit Moroccanoil Products and sues them by fictitious  
15 names DOES 11 through 20.

16  
17           12. Other than as alleged in this Complaint, Moroccanoil is ignorant of the  
18 true identities and participation of DOES 1 through 20, and therefore sues them by such  
19 fictitious names. Moroccanoil is informed and believes that each of the defendants  
20 designated as a Doe is liable in some manner for the acts, omissions, damages, and  
21 injuries of which Moroccanoil alleges in this Complaint. Moroccanoil will seek to  
22 amend this Complaint to state the true identities of DOES 1 through 20 when  
23 ascertained. Groupon and the Doe Defendants are referred to collectively as  
24 “Defendants.”

25  
26           13. On information and belief, each of the Defendants was at all relevant times  
27 acting to the fullest extent recognized by law as the agent, employee or co-conspirator  
28 of each of the other Defendants and that in committing the acts and omissions alleged

1 herein and causing the injuries alleged, was acting within the scope of such agency,  
2 employment, conspiracy, joint venture or partnership relationship. The Defendants  
3 have committed acts in furtherance of the conspiracy, have given aid and  
4 encouragement to their co-conspirators and have ratified and adopted the acts of their  
5 co-conspirators.

6  
7 14. On information and belief there exists, and at all times mentioned there  
8 existed, a unity of interests and ownership between individual Defendants and business  
9 entity Defendants such that any individuality and separateness between the individual  
10 and businesses never existed or has ceased to exist, and each Defendant is in each  
11 instance the alter ego of the other Defendants who control all such entities. To adhere  
12 to the fiction of the Defendant entities as having existence as separate and distinct from  
13 the individual Defendants or from those with them and who owned and controlled them  
14 would permit an abuse of the corporate and other entity privileges, would sanction  
15 fraud, and would promote injustice.

16  
17 **THE MOROCCANOIL PRODUCTS AND INTELLECTUAL PROPERTY**

18 15. All of the Moroccanoil Products bear one or more trademarks  
19 (“Moroccanoil Trademarks”) which are federally registered in Class 3 on the principal  
20 register of the United States Patent and Trademark Office (“USPTO”), including but  
21 not limited to:

- 22  
23 a. the word “Moroccanoil” - USPTO Registration No. 3,478,807;  
24  
25 b. “M Moroccanoil Design” - with the word Moroccanoil in white  
26 horizontal lettering through the letter M in copper orange on a turquoise blue  
27 background, USPTO Registration No. 3,684,909 (pictured below); and  
28



c. “M MoroccanOil Design” - with the word MoroccanOil in white vertical lettering next to the letter M in copper orange on a turquoise blue background, USPTO Registration No. 3,684,910 (pictured below); and



d. The MoroccanOil scent – a high impact fragrance primarily consisting of musk, vanilla, rose, and lavender, USPTO Registration No. 4,057,947.

16. Since January 2007, MoroccanOil has continuously used one or more of the MoroccanOil Trademarks in commerce in the United States. As a result of its success, MoroccanOil has built goodwill and value in the MoroccanOil Trademarks such that consumers associate them exclusively with MoroccanOil.

17. Each genuine MoroccanOil Oil Treatment product is packaged in 3.4 fluid ounce, amber colored, druggist-style bottles with black screw-on caps. The turquoise blue, rectangular-shaped front labels of the MoroccanOil Oil Treatment products contain the MoroccanOil logo with an orange-colored “M” and the word “MOROCCANOIL” in white, capital letters vertically up the left hand side of the label,

1 as well as the words “Moroccanoil Treatment”, “for all hair types”, and “alcohol free”  
2 in English and Spanish. The turquoise blue, rectangular-shaped back labels of the  
3 Moroccanoil Oil Treatment products contain the Moroccanoil logo with an orange-  
4 colored “M” and the word “MOROCCANOIL” in white, capital letters, a description  
5 of the product and its usage in English and Spanish, and the words “sold in professional  
6 salons worldwide”. Each genuine bottle includes a sticker that extends from the top of  
7 the bottle cap down to the front of the bottle bearing the words “The Original”. Each  
8 bottle of genuine Moroccanoil Oil Treatment product has the Moroccanoil Trademarks  
9 on it.

10  
11 18. The packaging in which Moroccanoil sells its products (“Moroccanoil  
12 Trade Dress”) has acquired secondary meaning and has become exclusively associated  
13 with Moroccanoil in the minds of consumers. The Moroccanoil Trade Dress is the  
14 overall appearance of the Moroccanoil Products’ packaging and advertising, including  
15 but not limited to each of the following elements individually and in combination with  
16 one another: the Moroccanoil trademarks; distinctive turquoise blue color; copper  
17 orange lettering, graphics and background design elements; copper orange and white  
18 lettering, graphics and background design elements on a turquoise blue background;  
19 and an amber bottle packaged in a rectangular turquoise blue box. The Moroccanoil  
20 Trade Dress is non-functional and has been in use in commerce since at least January  
21 2007.

22  
23 19. Moroccanoil distributes in the United States hair and body care products  
24 utilizing Moroccanoil’s distinctive trademarks and trade dress (the “Moroccanoil  
25 Products”). A true and correct color photograph of Moroccanoil’s signature  
26 Moroccanoil Oil Treatment product is shown below.

## Moroccanoil Oil Treatment



### THE COUNTERFEIT AND INFRINGING PRODUCTS

20. Moroccanoil, Inc. does not sell its products to Groupon and Groupon is not an authorized Moroccanoil supplier or distributor. Defendants are not authorized to print or apply any Moroccanoil trademark on any packaging for Moroccanoil products.

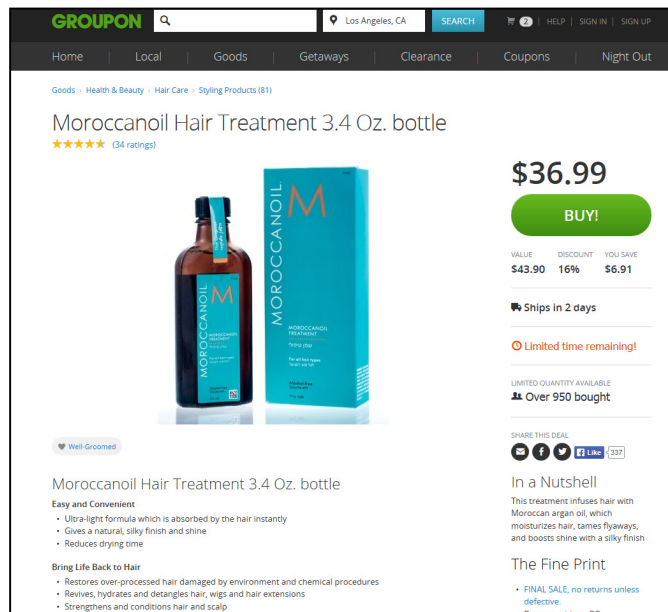
21. In or around August 2015, Moroccanoil was informed of the counterfeit distribution of Moroccanoil Products through Groupon's e-commerce marketplace.

22. The counterfeit Moroccanoil Products offered and advertised by Defendants are nearly identical imitations of genuine Moroccanoil Treatment sold by Moroccanoil in the United States. The trade dress of the counterfeit product is nearly identical to the Moroccanoil trade dress, including the size, shape, color, wording, and overall appearance of the products. The counterfeit product labels bear copies of Moroccanoil's Trademarks. An image of the counterfeit product sold by Groupon is pictured below:





23. An image of Groupon's offer, taken from their website <https://www.groupon.com/deals/gg-moroccan-oil-hair-treatment> featuring the counterfeit Moroccanoil product is pictured below:



**FIRST CLAIM FOR RELIEF**  
**TRADEMARK COUNTERFEITING AND INFRINGEMENT**  
**(15 U.S.C. § 1114)**  
**AGAINST ALL DEFENDANTS**

24. Moroccanil alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 23, as if fully set forth herein.

25. Based on Moroccanil's extensive advertising under the Moroccanil Trademarks, its extensive sales and the widespread popularity of Moroccanil Products, as alleged herein, any product bearing one or more of the Moroccanil Trademarks is immediately associated by purchasers and the public as being a genuine product of Moroccanil.

26. The use of one or more copies of the Moroccanil Trademarks by Defendants on the counterfeit bottles of Moroccanil Treatment, which Defendants advertised and offered for sale deceives and confuses consumers into believing that the counterfeit Moroccanil Products are genuine and made by Moroccanil. In fact, the purported Moroccanil Products supplied by Defendants are not genuine Moroccanil Products and bear counterfeit and infringing copies of Moroccanil's Trademarks.

27. Moroccanil has not consented to or authorized the wrongful activities of Defendants as alleged herein, and the production and sale of counterfeit products by Defendants has created the false impression that the counterfeit products are manufactured, distributed, warranted, authorized, sponsored, or approved by Moroccanil.

28. As a direct and proximate result of Defendants' counterfeiting and infringement of the Moroccanil Trademarks, Moroccanil has suffered damages to its

1 business, goodwill, and property in an amount unknown and such damages will  
2 continue to increase every day. MoroccanOil will amend its pleadings, at or before trial,  
3 to conform to proof of the amount of such damages.

4  
5 29. As a proximate result of Defendants' wrongful conduct, Defendants have  
6 been unjustly enriched while MoroccanOil has suffered damages of a nature and in an  
7 amount according to proof at trial.

8  
9 30. MoroccanOil demands and is entitled to an accounting from each of the  
10 Defendants, including all information necessary to permit MoroccanOil to determine the  
11 gains, profits and advantages that Defendants have obtained by reason of their wrongful  
12 conduct described herein.

13  
14 31. MoroccanOil has no adequate remedy at law. Monetary compensation will  
15 not afford MoroccanOil adequate relief. Defendants' acts and omissions as alleged  
16 herein will engender the need for a multiplicity of judicial proceedings and will cause  
17 damages to MoroccanOil that are difficult, if not impossible, to measure. Unless  
18 Defendants are preliminarily and permanently enjoined from committing the unlawful  
19 acts alleged, including infringement of the MoroccanOil Trademarks, MoroccanOil will  
20 continue to suffer irreparable harm. Injunctive relief is therefore appropriate pursuant  
21 to 15 U.S.C. § 1116 to prevent Defendants from engaging in any further violations of  
22 15 U.S.C. § 1114.

**SECOND CLAIM FOR RELIEF**  
**FALSE DESIGNATION OF ORIGIN**  
**AND FALSE REPRESENTATION**  
**(15 U.S.C. § 1125(a))**  
**AGAINST ALL DEFENDANTS**

32. Moroccanil alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 23, as if fully set forth herein.

33. The advertisement and offer for sale of counterfeit Moroccanil Products by Defendants that are indistinguishable from authentic Moroccanil Products constitutes a false designation of origin, false description and a false representation that the counterfeit products manufactured, distributed, offered, and/or sold by Defendants originate from, or are sponsored or authorized by Moroccanil.

34. The activities of Defendants in advertising and offering for sale counterfeit Moroccanil Products constitute violations of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

35. As a direct and proximate result of Defendants' violations of 15 U.S.C. § 1125(a), Moroccanil has suffered damages to its business, goodwill, and property in an amount unknown and such damages will continue to increase every day. Moroccanil will amend its pleadings, at or before trial, to conform to proof of the amount of such damages.

36. As a proximate result of Defendants' wrongful conduct, Defendants have been unjustly enriched while Moroccanil has suffered damages of a nature and in an amount according to proof at trial.

1           37. MoroccanOil demands and is entitled to an accounting from each of the  
2 Defendants, including all information necessary to permit MoroccanOil to determine the  
3 gains, profits and advantages that Defendants have obtained by reason of their wrongful  
4 conduct described herein.

5  
6           38. MoroccanOil has no adequate remedy at law. Monetary compensation will  
7 not afford MoroccanOil adequate relief. Defendants' acts and omissions as alleged  
8 herein will engender the need for a multiplicity of judicial proceedings and will cause  
9 damages to MoroccanOil that are difficult, if not impossible, to measure. Unless  
10 Defendants are preliminarily and permanently enjoined from committing the unlawful  
11 acts alleged, including infringement of the MoroccanOil Trademarks, MoroccanOil will  
12 continue to suffer irreparable harm. Injunctive relief is therefore appropriate pursuant  
13 to 15 U.S.C. § 1116 to prevent Defendants from engaging in any further violations of  
14 15 U.S.C. § 1125(a).

15  
16                                   **THIRD CLAIM FOR RELIEF**  
17                                   **UNFAIR BUSINESS PRACTICES**  
18                                   **(CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200)**  
19                                   **AGAINST ALL DEFENDANTS**

20           39. MoroccanOil alleges and incorporates by reference each and every  
21 allegation, contained in Paragraphs 1 through 23, as if fully set forth herein.

22  
23           40. The wrongful conduct of Defendants, as alleged herein, is in active  
24 participation and concert with the other named defendants and constitutes unfair,  
25 illegal, and/or fraudulent business practices as defined by California Bus. & Prof. Code  
26 § 17200, *et seq.*

1           41. This unfair competition includes, but is not limited to, the offering for sale  
2 and advertising of counterfeit Moroccanoil Products, and other related acts of unfair  
3 competition.

4  
5           42. As a proximate result of Defendants' wrongful conduct, Moroccanoil has  
6 lost money or property and Defendants have been unjustly enriched.

7  
8           43. Moroccanoil has no adequate remedy at law. Monetary compensation will  
9 not afford Moroccanoil adequate relief. Defendants' acts and omissions as alleged  
10 herein will engender the need for a multiplicity of judicial proceedings and will cause  
11 damages to Moroccanoil that are difficult, if not impossible, to measure. Unless  
12 Defendants are preliminarily and permanently enjoined from committing the unlawful  
13 acts alleged Moroccanoil will continue to suffer irreparable harm. Injunctive relief is  
14 therefore appropriate pursuant to Business & Professions Code Sections 17200 and  
15 17500, *et seq.* to prevent Defendants from engaging in any further acts of unfair  
16 competition.

17  
18                               **FOURTH CLAIM FOR RELIEF**  
19                               **COMMON LAW UNFAIR COMPETITION AND**  
20                               **CONSPIRACY TO UNFAIRLY COMPETE**  
21                               **AGAINST ALL DEFENDANTS**

22           44. Moroccanoil alleges and incorporates by reference each and every  
23 allegation contained in Paragraphs 1 through 23, as if fully set forth herein.

24  
25           45. Defendants use unfair trade practices to advertise and offer for sale  
26 counterfeit Moroccanoil Products in competition with Moroccanoil.



- 1                   b.     Using any false designation of origin or false representation
- 2                         concerning the genuineness any Moroccanoil Product offered by
- 3                         Defendants.
- 4
- 5           2.     For an order requiring Defendants, and each of them, to deliver to
- 6 Plaintiff:
- 7
- 8                   a.     All products, literature, and other material bearing any
- 9                         counterfeits of the Moroccanoil Trademarks or any other
- 10                        infringement of Plaintiff's intellectual property or which falsely
- 11                        identifies the source of any products; and
- 12
- 13                   b.     Printing devices, labels, packing, bottles, advertising or any other
- 14                         items used in the manufacture, publicity, advertising or sale of
- 15                         products bearing any counterfeits of the Moroccanoil
- 16                         Trademarks.
- 17
- 18           3.     For a seizure of all counterfeit Moroccanoil goods and marks;
- 19
- 20           4.     For expedited discovery on the subject of the suppliers and purchasers of
- 21 Defendants of counterfeit Moroccanoil Treatment and other Moroccanoil Products;
- 22
- 23           5.     For damages and remedies as provided by 15 U.S.C. §§ 1114, 1116, 1117,
- 24 and 1125 and as provided by 19 U.S.C. § 1526;
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- 26           6.     For prejudgment interest and costs; and
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- 28           7.     For such other and further relief as the Court deems just and proper.



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Dated: October 14, 2014

Mark D. Kremer  
Rebecca A. Bellow, members of  
CONKLE, KREMER & ENGEL  
Professional Law Corporation

By: /s/ Rebecca A. Bellow  
Rebecca A. Bellow  
Attorneys for Plaintiff Moroccanoil, Inc.

**DEMAND FOR JURY TRIAL**

Plaintiff Moroccanoil, Inc. demands trial by jury of all triable issues.

Dated: October 14, 2014

Mark D. Kremer  
Rebecca A. Bellow, members of  
CONKLE, KREMER & ENGEL  
Professional Law Corporation

By: /s/ Rebecca A. Bellow

Rebecca A. Bellow  
Attorneys for Plaintiff Moroccanoil, Inc.